IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.29 OF 2005

SHRI GAJANAN MAJIK,
SON OF SHRI GOPAL MAJIK,
RESIDENT OF SONARBHAT,
LADFEM, HOUSE NO.86,
BICHOLIM-GOA. ..... APPLICANT

VERSUS

STATE, THROUGH PUBLIC PROSECUTOR,
PANAJI-GOA. ..... RESPONDENT

SHRI ROHIT BRAS DE SA, ADVOCATE FOR THE APPLICANT.

SHRI S.N. SARDESSAI, PUBLIC PROSECUTOR FOR THE RESPONDENT.

CORAM : **N. A. BRITTO, J.**

DATE : **28/11/2005**

ORAL JUDGMENT

In this Revision the Accused has challenged Judgments/Orders dated 16/07/2002 and 15/10/2005 of the learned JMFC, Bicholim and the learned Assistant Sessions Judge, Panaji, convicting the Accused and upholding the said conviction, respectively under Section 279 and 304-A of I.P.C.

2. An accident took place on 29/5/1998 at about 4 p.m. at Amona near the gate of Sesa Goa Pig Iron Plant. This accident took place between

the minibus having no. GA-01/U-3412 driven by the Accused and the motorcycle having no. GA-01/B-7496 driven by Digambar A. Naik who died in the said accident.

3. As a result of the said accident the Accused came to be prosecuted on a charge sheet filed under section 279 and 304-A I.P.C. in which the prosecution examined as many as nine witnesses. There is no dispute that at the relevant time the Accused was driving the said minibus and it must be stated that there is ample evidence to that effect which has been considered by both the Courts below. Both the Courts below have convicted the Accused, substantially based on the evidence of PW 5, Shamba Gawas who was the owner of the said minibus, PW 6 Dayanand Gawas who was the cleaner of the said bus, PW 8 Servo Fernandes, motor vehicle inspector and PW 9 Ashwini Surlikar who was a passenger and therefore an eye witness as per prosecution, to the accident.

4. Shri Bras De Sa, the learned Counsel on behalf of the Accused has submitted that, what was recorded on the accident report by PW 8 Servo Fernandes that it was reported to him that the accident had occurred when the driver was busy changing the tape recorder cassette was nothing but hearsay evidence and therefore no conclusion could be drawn that the accident had taken place at the time when the Accused was changing the said cassette. Shri Bras De Sa has further submitted that no conviction could be based on the sole testimony of PW 8 Servo Fernandes.

5. On the other hand it has been submitted by Shri Sardessai, the learned P.P. that there are concurrent findings of guilt given by both the Courts below and therefore no inference is called for.

6. There is no doubt that there are concurrent findings of guilt given by both the Courts based on evidence produced by the prosecution. Concurrent findings are good but justice is better. There is no doubt that the Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section 401 of Cr.P.C. but at the same time it is to be seen that this power cannot be exercised as a second appellate power. However, when both the courts below over look essential parts of evidence and base their conclusions upon extraneous matters or when both the Courts fail to notice basic and glaring features in the evidence of the witnesses which tantamount to gross miscarriage of justice this Court is certainly entitled to interfere in exercise of its revisional jurisdiction.

7. PW 5 Shamba Gawas, the owner of the minibus, soon after the accident on 29/5/1998 had reported the matter to the police about the accident and the said report was produced at Exh PW 5/A. It was stated by him that the accident had taken place because the steering of the bus got locked, a version which he maintained before the court and he was not at all cross examined by the prosecution.

8. PW 6 Dayanand Gawas who was the cleaner of the said bus had also deposed that the Accused had told him that the steering was locked and as a result of that, the accident had taken place. PW 6 Dayanand Gawas was also not cross examined by the prosecution.

9. PW 9 Ashwini Surlikar was apparently a passenger traveling in the said bus and she had stated that at relevant time she was looking out of the window and pointing out to her daughter, the place where their relations work, and at that time she had heard a loud sound of their bus dashing against something. She had stated that she had not seen as to how the accident took place. Hence she was cross examined by the prosecution. In the course of the said cross examination PW 9 Surlikar maintained that she had not told the police, in her statement recorded, that when the bus had reached Amona the driver had caught hold of the steering with his right hand and was trying to operate the cassette player with the left hand by bending and thereby losing control of the bus which went to the right side to dash against the motorcyclist.

10. No further witness was examined by the prosecution to support what PW 8 Servo Fernandes had recorded in his certificate. PW 8 Servo had recorded in the Certificate that “it was reported that accident occurred when the driver was busy to change the tape recorder cassette” and PW 9 Ashwini had not supported such a version that the accident had taken place while the driver was changing the cassette. What was recorded by PW 8 Servo

was merely hearsay and therefore no inference could be drawn based on the same that the Accused had lost control of the bus as he was changing the cassette in the cassette player.

11. In addition to what the owner namely PW 5 and the cleaner namely PW 6 had stated in favour of the Accused that the accident took place because the steering of the bus got locked, the Accused had also examined a mechanic namely AW 1 Satyawan Naik who had further stated that, about five days prior to the accident the said bus was brought to their garage and after the accident the owner had taken him to the spot to repair the bus and to remove the steering lock and after using the keys given by the owner he had removed the steering lock. He had also stated that even previously the steering of the said bus had got locked and that had taken place at Navelim. The evidence led by the prosecution as well as by the defence clearly shows that the accident had taken place because of a mechanical defect mainly that the steering of the bus had got locked at the time when it met with the accident with the motorcyclist. It is true that the bus could be seen from the sketch, having gone to the right, beyond the road alongwith the said motorcyclist but on this count alone one certainly could not come to the conclusion that the Accused/driver of the said bus was driving it rashly and negligently, more so because the motorcyclist was coming from his opposite direction. In my opinion, the conviction and sentence has been recorded against the Accused against weight of evidence led by the prosecution as well as by the defence and on mere surmises and

as such, such a conviction and sentence is liable to be inferred with and set aside.

12. In the light of the above the revision petition is hereby allowed and the orders of both the courts dated 16/07/2002 and 15/10/2005 are hereby set aside. The Accused shall stand acquitted under Section 279, 304-A I.P.C. The bail bonds executed by the Accused shall stand discharged.

N.A. BRITTO, J.

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